

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS. 68 AND 72 OF 2001

WRIT PETITION NO. 68 OF 2001

Mr. Yuvaraj Naik,
major age, Translator,
Goa Legislature Board,
Porvorim, Bardez-Goa,
resident of Porvorim, Bardez,
Goa.

... Petitioners

versus

1. State of Goa, through
its Chief Secretary,
having office at
Secretariat, Panaji-Goa.
2. The Goa Legislature
Secretariat Board
(constituted under the
Goa Legislature
Secretariat & Conditions
of Service, 1988),
represented herein by the
Secretary, Legislature
Department, Secretariat,
Panaji-Goa.

... Respondents

WRIT PETITION NO. 72 OF 2001

Smt. Blandina D'Sa,
 aged 33 years, Translator,
 Goa Legislature Secretariat,
 Porvorim, Bardez-Goa,
 resident of 19-C,
 Government Quarters,
 Patto Colony,
 Panaji-Goa.

... Petitioner

versus

1. State of Goa,
 through its Chief Secretary,
 having office at Secretariat,
 Panaji-Goa.

2. The Goa Legislature Secretary,
 (constituted under the Goa
 Legislature Secretariat
 Recruitment and Conditions
 of Service Rules, 1988),
 represented herein by the
 Under Secretary, Legislature
 Department, Secretariat,
 Panaji-Goa.

... Respondents

Mr. M. S. Sonak and Mr. Mandar Khandeparkar, Advocates for
 the Petitioners in both the petitions.

Mr. S. Vahidulla, Additional Government Advocate for the
 Respondent No.1 in both the petitions.

Mr. A. N. S. Nadkarni with Mr. H. D. Naik, Advocates for the
 Respondent No.2 in both the petitions.

**CORAM : A. P. LAVANDE &
N. A. BRITTO, JJ.**

DATE : 3RD APRIL, 2006.

JUDGMENT(Per N. A. Britto, J.)

Both the translators of the Goa Legislature Secretariat are before this Court to seek a writ of mandamus or any other writ, order or direction to the respondents to fix their pay scale at Rs.5500-9000 with consequential benefits consequent to the extension of the pay scales of the Fifth Pay Commission by virtue of Government of Goa Order dated 27-10-1997.

2. Some facts are required to be stated to dispose of both the petitions which have similar facts and the question of law being the same. Therefore, we propose to dispose of both the petitions by this common Judgment.

3. The recommendations of the Fourth Pay Commission were accepted by the Government of Goa w.e.f. 1-1-1986. By virtue of Order dated 30-9-1987 two posts of translators were created by the Government in the pay scale of

Rs.1400-2300. As per the respondents, this is the scale recommended by the Central Fourth Pay Commission as adopted by the Goa Government. Nilkanth Subhedar came to be appointed on one of the posts on 24-2-1998 and petitioner Yuvaraj Naik came to be appointed on 2-5-1988 in the said scale of Rs.1400-2300. The Government of Goa, Secretariat, Group 'C', Non-Gazetted Ministerial Posts, Recruitment Rules, 1988 published on Gazette dated 28-4-1988 show that the post of translators (Konkani and Marathi languages) in the State Secretariat carry a pay scale of Rs.1400-2300.

4. The petitioner Smt. Blandina D'Sa came to be appointed on 4-8-1989 in place of Nilkanth Subhedar and by then, in terms of Article 187(3) of the Constitution of India the Goa Legislature Secretariat(Recruitment and Conditions of Service) Rules, 1988 (Rules for short) were made and published on Gazette dated 21-4-1988. These Rules dealt with the conditions of service of the Goa Legislature Secretariat and Rule 6 of these Rules provided as follows :-

6. Conditions of Service:

(1) The scales of pay, allowances and other emoluments and other conditions of service of persons appointed to any posts under the Legislature Secretariat shall be the same as the scales of pay, allowances and other emoluments and conditions of service applicable to members of corresponding posts in the State Secretariat. Where there is no corresponding post in the State Secretariat, the scale of pay, allowances and other emoluments and other conditions of service shall be such as may be determined by the Special Board".

(2) Other Conditions of Service:

(i) In respect of all matters regulating the conditions of service of officers for which no provision or insufficient provision has been made in these rules, officers shall be governed by such rules as are applicable to the officers of the corresponding rank in the State Secretariat, subject to such modifications, variations, or exceptions, if any, in such rules, as the Board may, after consultation with the Chief Minister by order, from time to time, specify,

(ii) Where there is no officer of the corresponding rank in the State Secretariat, such matters shall be determined by the Special Board.

5. Rule 2(o) defines the expression "Special Board" to mean the Board consisting of Speaker, the Chief Minister or Minister for Parliamentary Affairs, if nominated by Chief Minister, and Dy. Speaker under Sub-Rule (3) of Rule 8. Sub-Rule 3 of Rule 4 provides that appointment to non-Gazetted Ministerial Group 'C' posts including Reporters shall be made by the Board. The expression "Board" has been defined by Rule 2(b) to mean the Board consisting of the Speaker and Deputy Speaker.

6. On the recommendations of the Special Board, the Under Secretary, Legislature, by his Order dated 7-7-1989 enhanced the pay scale of the posts of translators in the Goa Legislature Secretariat from Rs.1400-2300 to Rs.1640-2900 w.e.f. 3-7-1989 and when the petitioner came to be appointed in place of Nilkanth Subhedar on or about 4-8-1989 she was given offer of appointment on the revised scale of Rs.1640-2900.

The said scales were revised by the Special Board apparently with a view to strengthen the translation unit of the Goa Assembly so that they could cater to the various needs of translation of Assembly questions, Assembly Rules and gradually to translate the legislations coming before the House in Marathi/Konkani as a step towards the Translation of laws passed, by Goa Assembly in Konkani/Marathi for the benefit of the Members of the Goa Assembly and the general public, in the official language of the State.

7. The petitioners, therefore, came to be paid in the scale of Rs.1640-2900.

8. On or about 1-4-1993 pay scales of almost 75% of the staff members of the Legislature Secretariat were revised but the benefit of such revision was not extended to the petitioners who were translators. The petitioners made representations on 21-3-1995 on the refusal to grant the petitioners the revised scales. However, the representations of the petitioners came to be rejected on 18-4-1995 by Memorandum of the Under Secretary, Goa Legislature Secretariat. The petitioners did not

challenge the said refusal to grant to the petitioners revised scales, as granted to almost 75% of the staff of the Goa Legislature Secretariat.

9. Subsequently, the recommendations of the Fifth Pay Commission were extended to State Government Employees w.e.f. 1-1-1996 by virtue of Order dated 27-10-1997. The relevant portion of the said Order reads as follows:-

"3. Now, therefore, Government of Goa hereby directs as under:-

(a) That Central Civil Services (Revised Pay) Rules, 1997 as notified under G.S.R. 569(E) dated 30-9-1997 of the Government of India, Ministry of Finance be adopted and made applicable to the employees of Government of Goa w.e.f. 1-1-1996 subject to the following conditions:-

(i) Pay fixation in the proposed scales (Fifth Pay Commission) shall be done with reference to pay/pay scales of the Fourth Pay Commission existing as on 1-1-1996 and not with reference to revised/interim revised scales given by

Goa Government after 1-1-1986. All revisions for Secretariat and non-Secretariat staff consequent upon implementation of Fourth Pay Commission Report from 1-1-1986 shall be ignored for the purpose of equation of pay scales as well as fixation of pay. Option to retain old pay in the revised/interim revised pay scales given after 1-1-1986 shall not be available".

10. The grievance of the petitioners is that they are being denied the benefit of the Fifth Pay Commission scales corresponding to their pay scale of Rs.1640-2900. The case of the petitioner Smt. Blandina D'Sa is that she was given an offer of appointment on a pay scale of Rs.1640/- in the scale of Rs.1640-2900 and, therefore, her next pay scale has got to be Rs.5500-9000 and denying her the said scale of Rs.5500-9000 would amount to reduction of her basic salary from Rs.1640-2900 to Rs.1400-2300 which is arbitrary and illegal. The petitioner Yuvaraj Naik contends that he was not a beneficiary of any revised or interim revised scale as is referred to in Order dated 27-10-1997 and his post of Translator was upgraded and that too after taking into consideration the additional duties

which were proposed to be assigned and, therefore, the action of the respondents of denying the benefits of Fifth Pay Commission corresponding to the pay scale of Rs.1640-2900 is arbitrary and illegal. The case of the petitioner Smt. Blandina D'Sa is that there has been no revision of pay scale in her case and the Order dated 27-10-1997 is not attracted to the case of the petitioner as the petitioner was initially appointed in the scale of Rs.1640-2900 and consequently her pay scale upon revision ought to be Rs.5500-9000. Both the petitioners have relied upon certain instances where the Government was pleased to correct the anomalies in fixation of the pay scales and some Judgments of this Court to which aspect we shall refer to a little later.

11. The Secretary(Legislature) in his first affidavit dated 2-4-2001 has stated that the petitioners are seeking a writ in defiance of Rule 4(6)(1) of the Rules on the strength of the decision of the Special Board which was under an evident mistake and impermissible in law as it was contrary to the said Rules. He has stated that the Government Order dated 8-3-1994 (Ann.R-3) giving revised scales to the translators in the State Secretariat would apply to the petitioners also and that steps are

being taken in accordance with law to set right the exercise conducted, which was impermissible in law and has got to be rectified and that the petitioners by filing the present petition are attempting to preempt the right of the respondents to correct the illegalities and which is required to be corrected after hearing the petitioners. As per the respondents, the Special Board had no right to revise the pay scales of the petitioners and, therefore, the claim of the petitioners on the face of it is not maintainable. It is stated that as per Rule 4(6)(1) of the Rules the wage structure of the employees is to be at par with the pay scales of other employees holding the same posts in the State Secretariat and in case the petitioners are allowed to enhance scales then various similarly placed employees in the Government Secretariat will seek similar benefits putting the State to unreasonable demands. It is stated that the Special Board wrongly by Order dated 7-7-1989 revised the pay scales of the petitioners w.e.f. 3-7-1989 from Rs.1400-2300 to Rs.1640-2900 even though a corresponding post of translator existed in the Government Secretariat having a pay scale of Rs.1400-2300 and this was in contravention of the provisions of Rule 4(6)(1) of the Rules which were framed under Article 187(3) of the

Constitution of India and that the said Special Board took up for examination only the pay scales of the petitioners who were the translators and the pay scales of other employees were left out and in fact the Special Board ought to have taken up for revision the pay scales of Reporters, Chobdars, etc. which did not have corresponding posts in the State Secretariat and that the Legislature Secretariat would be initiating separate action for rescinding the said Order dated 7-7-1989 though no view at present has been taken. It is stated that the pay scales were enhanced by the Special Board with an ostensible ground of strengthening the translation unit ... etc. as set out in para 9(b) of the reply and that immediately thereafter the work of the translators came to be reviewed. In para (c), it is stated as to how the work of the petitioners was found not to be satisfactory, and the details of which, are not required to be referred to herein, and that instead of first judging their competence the Special Board proceeded to award a higher pay scale and that at one stage the Secretary(Legislature) had even suggested the course of abolition of the posts of translators and while the said decision was agreed upon by the Deputy Speaker, the Speaker minuted that the file be kept in question of referring to the

dictionary etc., and, the Under Secretary(Debates) was asked to conduct a test to their suitability. What were the findings of the test conducted by him in case of the petitioners are set out in para 9(d), the details of which, again are not required to be mentioned herein for the purpose of deciding these petitions. It has been stated that the petitioners have conveniently suppressed the fact that the order of the Government of Goa granting interim revised pay scales included a provision for such interim pay revision for the translators in the State Secretariat by virtue of Order No.14/6/19/GA & C(Part I) dated 8-3-1994 by which the pay scales of the translators (in Konkani and Marathi) were revised from Rs.1400-2300 to Rs.1640-2900. It is stated that the two posts of Translators created on 30-9-1987 were created in the pay scale of Rs.1400-2300 which was the scale recommended by the Fourth Pay Commission as adopted by the Goa Government and when the posts of translators were created in the State Secretariat they were also created in the pay scale of Rs.1400-2300. It is stated that the Goa Government did not appoint any exclusive Pay Commission and the pay scales recommended by the Fourth Central Pay Commission were adopted by the Goa Government with appropriate modifications

w.e.f. 1-1-1986, keeping in view the financial position of the State and that even the benefits the petitioners took from the Special Board, without powers under the Rules, are also with reference to the pay scales of Rs.1640-2900 a pay scale recommended only by the Fourth Central Pay Commission. It is stated that the pay scale of the petitioners/translators in the Goa Legislature Secretariat was originally Rs.1400-2300 and it stood revised to Rs.1640-2900(illegally) by the Special Board. It is stated that as it was a revision after 1-1-1986, the scale of Rs.1640-2900 was not reckoned for the purpose of equation with pay scales contained in the Fifth Central Commission Report but the unrevised/original pay scale of Rs.1400-2300 was reckoned for the purpose of the said equation and that the scale equivalent to Rs.1400-2300 in the Fifth Central Pay Commission Report is Rs.4500-7000 which has been duly granted to the petitioners/translators of the Goa Legislature Secretariat w.e.f. 1-1-1996. It is stated that the Fifth Pay Commission did not study the service conditions of the employees of the Goa Government or Goa Legislature Secretariat and, therefore, the recommendations cannot be directly applied to Government employees. It is stated that the Order dated 27-10-1997 of the

Goa Government is the medium through which a reference to pay scales in the Fifth Central Pay Commission Report can be made for the purpose of making a claim of pay scale and that in the case of the petitioners/translators of the Legislature Secretariat, the pay scale that can be equated with the pay scale recommended in the Fifth Central Pay Commission Report is Rs.4500-7000 only as the original or unrevised pay scale of the translators in the Legislature Secretariat in the Fourth Pay Commission regime was Rs.1400-2300. It is stated that whether a pay scale is an original pay scale or a pay scale revised ad interim can be known only with reference to the date of the coming into force of the pay scales and is not known with reference to the appointment of individuals in the pay scales and that with reference to 1-1-1986 being the date on which the Government adopted the recommendations of the Fourth Central Pay Commission, the pay scale of Rs.1640-2900 was a pay scale revised ad interim inasmuch as that pay scale did not commence from 1-1-1986 and all changes in the pay structure which were not given effect from 1-1-1986 tantamount to revisions after 1-1-1986 and, therefore, the claim of the petitioner Smt. Blandina D'Sa that since she had been directly

appointed at Rs.1640-2900 and, therefore, it should be original pay scale and not a revised pay scale after 1-1-1986 cannot be accepted and accepting the same would create two categories of employees one like petitioner Yuvaraj Naik who was appointed at Rs.1400-2300 and later given the revised scale of Rs.1640-2900 for whom the revision of the scale later to 1-1-1986 being clear, the equation with the Fifth Pay Commission's scales will be with reference to unrevised pay scale of Rs.1400-2300 and it will create another category of employees like the petitioner Smt. Blandina D'Sa who was placed at Rs.1640-2900 simply because on the date of her appointment the unrevised scale of Rs.1400-2300 was not in force and that the scale of Rs.1640-2900 is in fact a revised scale. It is stated that the attempts of the petitioners to draw a parallel to the pay scales of other posts and by conveniently suppressing the fact that the translators in the State Secretariat continued to draw a pay scale of Rs.4500-7000 is nothing but an attempt to mislead the Court. It is stated that before the advent of the Rules w.e.f. 21-4-1988 the Legislature Department was part of the Government Secretariat and their pay scales were one and the same and that on 21-4-1988 the said Rules were brought into force on account of

the constitutional scheme of having separate Rules of the Legislature Department as ordained in Article 187(3) of the Constitution. It is stated that an attempt of the petitioners to compare the pay scales of a post which has no rational nexus to the post of translators will jeopardize the maxim of equal pay for equal work.

12. We have heard the learned Counsel on behalf of the parties at length. The petitioners have pointed out certain anomalies e.g. in the case of Vijay Paranjape who was a Technical Assistant/Technical Officer in the Administrators Reforms Department in the pay scale of Rs.1640-2900 and who was given interim revised scale on 8-3-1994 from Rs.1640-2900 to Rs.2000-3200 and after Order dated 27-10-1997, his pay scale which was initially fixed at Rs.5500-9000 corresponding to Rs.1640-2900 was fixed after a representation was being made by him from Rs.5500-9000 to Rs.6500-10500 which corresponds to pre-revised pay scale of Rs.2000-3200. Another instance is that of Raju Gawas, a Technical Officer in the Secretariat who had filed a petition bearing No.439/1998 and who was granted a pay scale from Rs.1640-2900 to Rs.5500-9000 and whose pay

scale was subsequently revised by Order dated 22-3-1999 to Rs.6500-10500 and the petition filed by him was withdrawn on 5-4-1999. Yet, another anomaly pointed out on behalf of the petitioners is that of Rahimtulla Aga and Diwan Rane appointed as Senior Assistants in the Secretariat in the pay scale of Rs.1650-2900 but pursuant to Order dated 27-10-1997 their salary was fixed at Rs.4500-7000 and representations were made by them vide Order dated 9-6-1999 their pay scale was revised to Rs. 5500-9000. However, it is interesting to note that it is not the case of the petitioners that the aforesaid anomalies were in respect of the cadre to which the petitioners belonged to or for that matter the said individuals belonged to the same Department as that of the petitioners. There were some petitions which were decided by this Court from time to time and Mr. M. S. Sonak, the learned Counsel on behalf of the petitioners has submitted that the case of the petitioners ought to be decided by applying the ratio of the decisions of this Court in the case of **Pooja D. Phadte and another v. State of Goa and another** (unreported decision dated 29-7-2003 in Writ **Petition No.357 of 1999**). Mr. Sonak has also placed reliance on the case of **Sergio A. Gonsalves and others v. State of Goa**

(unreported decision dated 29-7-2003 in Writ Petition No.80 of 2000).

13. On the other hand, Mr. A. N. S. Nadkarni has placed reliance on another unreported decision of this Court in the case of **Shri V. D. Bhole and another v. State of Goa and others** (unreported decision dated 28-7-2003 in Writ Petition No.322 of 1998) decided by common Judgment.

14. In our view, the decisions cited on behalf of the petitioners are not at all applicable to the facts of the case of the petitioners. The case of **Pooja D. Phadte and another v. State of Goa and another**(supra) was a case of legal assistants in the Secretariat. Pursuant to an advertisement inviting applications for the post of legal assistants in the scale of Rs.1640-2900 they had applied for the said post and were given appointments and were subsequently confirmed but consequent to Order dated 27-10-1997 their pay scale was fixed at Rs.4500-7000. They contended that they were not appointed in the pay scale of Rs.1350-2000 or Rs.1400-2300. They also made reference to the case of Rahimtulla Aga and Diwan Rane. This Court held that the

petitioners/legal assistants were appointed by way of direct recruitment and were offered the pay scale of Rs.1640-2900 and therefore the corresponding scale being Rs.5500-9000, it was not open to the respondents to place the petitioners in the pay scale of Rs.4500-7000. What is to be noted is the fact that the Division Bench of this Court took the note that there was nothing before the Court to show what was the pre-revised pay scale after the Fourth Pay Commission and subsequent revision and since the pay scale of the petitioners/legal assistants was not revised after their appointment and before accepting the offer the petitioners were entitled to be fixed at Rs.5500-9000. The ratio of this decision cannot be applied to the case at hand for the posts the petitioners were holding were specifically created at a pay scale of Rs.1400-2300 and not only that the then prevailing Rules also provided for the same and as far as the petitioner Yuvaraj Naik is concerned his pay was revised from Rs.1400-2300 to Rs.1640-2900 by the Special Board who otherwise could not have done the same as we shall show in little greater detail a little later. The case of **Serjio A. Gonsalves and others v. State of Goa** (supra) was a case where there was a disparity in scales between those who were promoted and others who were directly

appointed as senior assistants in the Government Secretariat and in order to bring uniformity in the scales, the Division Bench of this Court observed that there cannot be two different pay scales in the same Department for persons holding the same posts and in the same cadre and, therefore, it was impermissible for the State to give one scale to the promotees and the other to direct recruits and both should be treated alike. In our view, the petitioners cannot derive any support from the said decision.

15. On the other hand, in the case of **V. D. Bhobe and another v. State of Goa and others**(supra) the Division Bench of this Court referred to the decision of the Supreme Court in the case of **Chandigarh Administration and another v. Jagjit Singh and another**((1995) 1 SCC 745) wherein the Supreme Court had stated that "generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the

petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order" and held that merely because the Government acted, may be even arbitrarily, in some cases it does not mean that this Court can issue to the respondent/State, a direction to perpetrate that illegality and such a mandamus can never flow in a case where no arbitrariness is disclosed by the petitioners in the action of the State Government. The Division Bench also noted that there was no material placed on record to show that the petitioners in that case were in the same class of those to whom revised scales were granted. If the petitioners, at all can claim equality in pay scales it is those who like them are similarly situated namely, the translators in the State Secretariat but it is evident that the petitioners are trying to march over them, to have a higher pay scale. As stated by the Supreme Court in **Union of India v. International Trading Co.** (2003(5) SCC 437) the petitioners have to establish strength of

their case on some other basis and not by claiming negative equality.

16. Indisputably there are translators in the State Secretariat as stated by the Secretary(Legislature), Government of Goa and this assertion apart from the fact it is not denied by the petitioners, has been made good by production of the Order dated 8-3-1994(Ann.R-3) by which both the translators in the State Secretariat (in Konkani and Marathi) were given revised pay scale from Rs.1400-2300 to Rs.1640-2900 and have remained on those scales inspite of the Order dated 27-10-1997, and, which has also been made good by production of Government Gazette dated 28-4-1988, Series I No.4 in which the Government of Goa, Secretariat Group 'C' Non Ministerial Posts, Recruitment Rules,1988 were published, inter alia, showing that the posts of translators (in Konkani and Marathi) languages carried a pay scale of Rs.1400-2300. It also cannot be disputed that prior to enactment of the Rules the posts of Translators in the Legislature Secretariat carried a pay scale of Rs.1400-2300 and this is evident from Gazette dated 24-4-1969 in which the Government Legislature Department, Translator(Interpreter)

Class III(Non-Ministerial, Non-Gazetted) Posts Recruitment Rules, 1969 were published and subsequently amended by Notification No.LA/B/2772-A/1987 dated 16-12-1987 published on Gazette dated 8-7-1988 showing a pay scale of Rs.1400-2300 and as already stated the posts of the translators which the petitioners hold were indeed sanctioned by the Government as can be seen from Order dated 30-9-1987(Ann.R-4) in the scale of Rs.1400-2300. As seen from Sub-Rule (6) of Rule 4 the scales of pay, allowances and other emoluments or other conditions of service in the Legislature Secretariat had to be the same as the scales of pay, allowances etc. as were applicable to the members of the corresponding posts in the State Secretariat. The corresponding posts were those of the translators in the State Secretariat carrying the said pay scale of Rs.1400-2300 which was later on revised to Rs.1640-2900. It is only where there was no corresponding posts in the State Secretariat that the Special Board was empowered to determine the scale of pay, allowances etc. Since there were corresponding posts of translators in the State Secretariat any decision by the Special Board recommending a separate and higher scale to the posts of translators in the Legislature Secretariat was clearly without

jurisdiction. Even otherwise in case for any reason the Special Board had felt that the nature of duties of the translators of the Legislature Secretariat were different from those performed by the translators in the State Secretariat any decision taken by the Special Board had to be given Government sanction not only by amending the Recruitment Rules providing for a new scale as proposed by the Special Board but also by taking the approval of the Government as required under the Rules in force. The Order dated 7-7-1989(Ann.R-2) has not been issued by the Government or with the approval of the Governor. It has been issued only by the Under Secretary, Legislature. The fact that the petitioners came to be paid for some time at a pay scale of Rs.1640-2900 in the light of the decision of the said Special Board is of no assistance to the case of the petitioners. In our view, the principle that an authority cannot be allowed to attack its own order as a respondent, as laid down by the Apex Court in **State of Assam and another v. Raghava Rajgopalachari** (1972 S.L.R.44) cannot be applied to the case at hand. In the case at hand, the scale payable to the translators of the Legislature Secretariat was revised by the Special Board who had no authority to revise the same in terms of Rule 6 in view of the

fact that there were corresponding posts of translators in the State Secretariat and only in the event that there were no corresponding posts that the Special Board in terms of Rule 6(1) of the Rules could have determined the pay scales of the Translators of the Legislature Secretariat. Not only that, the Order dated 7-7-1989 issued by the Under Secretary, Legislature did not even have the imprimatur of the State Government as required under the Rules and one fails to understand as to how without a formal approval of the Government and without changing the relevant recruitment which provided for a different scale Rules which a new pay scale from Rs.1400-2300 to Rs.1640-2900 came to be sanctioned in the case of the translators of the Legislature Secretariat. In our view, in these petitions there is no question of attacking the Order of the Special Board by the Secretary(Legislature). In fact, the Secretary(Legislature) who has filed the affidavit opposing the petition was duty bound to place the correct legal position, not only before the State Government but also before this Court as he has rightly done, namely that the translators of the Legislature Secretariat could not have been granted the said scale of Rs.1640-2900 when their counterparts in the State

Secretariat were drawing a scale of Rs.1400-2300. As far as the petitioner Yuvaraj Naik is concerned, it is a clear case of he having been granted a revised scale of Rs.1640-2900 when he was not entitled to the same and having been so granted after 1-1-1986 the same had to be ignored in terms of the Government Order dated 27-10-1997. As far as the petitioner Smt. Blandina D'Sa is concerned, she could not have been appointed on a scale which is wrongly revised. She is not entitled to the same on the principle of promissory estoppel since it is well settled that there cannot be promissory estoppel against Law or Rules having the force of law. The Division Bench of this Court in the case of **Shri V. D. Bhohe and another v. State of Goa and others** (supra)referring to the Order dated 27-10-1997 had observed that it was clear that the Government in its Order dated 27-10-1997 had decided to ignore all revisions where there were revised/interim revised scales given after 1-1-1986. Such decision by the State Government which alone is entitled to fix the pay scales by itself could not have been said to be arbitrary or illegal to fix the pay scales. Once the Government had fixed the pay scales, ignoring the revisions made after 1-1-1986, by itself it could not be said that the decision was arbitrary or

illegal. The action of the Government could be said to be arbitrary or unreasonable, if at the time of fixing the pay scales the Government had fixed the pay scale of some cadres or posts in the revised scales after 1-1-1986 and chose not to give to others similarly situated, the benefit of the revision allotted after 1-1-1986. As already seen the petitioners got their pay scale enhanced after 1-1-1986 from Rs.1400-2300 to Rs.1640-2900 and, therefore, the Government was certainly justified in ignoring the said revision in terms of the said Order dated 27-10-1997. In the case of the petitioner Smt. Blandina D'Sa the said scale was wrongly given to her and in cases of both without the approval of the Government. Both the petitioners, therefore, had no right to claim the corresponding pay scale of Rs.5500-9000 when their counterparts in the State Secretariat are getting a pay scale from Rs.1400-2300 to Rs.1640-2900. It is well settled, as stated by the Apex Court in the case of **State of U.P. and others v. Harish Chandra and others**(AIR 1996 SC 2173) that under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of

the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law. Again, in the case of **Union of India and another v. Kirloskar Pneumatic Company Limited**(AIR 1996 SC 3285), the Supreme Court stated that the power conferred by Articles 226 and 227 was designed to effectuate the law and to enforce the Rule of law and to ensure that the several authorities and organs of the State act in accordance with law. It cannot be invoked for directing the authorities to act contrary to law. In the case at hand, the scale payable to the petitioners was wrongly revised pursuant to the recommendations of the Special Board and without the authority of the Government as required under the Rules and contrary to the scale provided under the Rules. The Government has rightly ignored the said revision for the purposes of extending the benefits of the Fifth Pay Commission to the petitioners/translators in the Legislature Secretariat. Granting a scale of Rs.5500-9000 will open the flood gates of other translators specially those in the State Secretariat. The

petitioners having been rightly or wrongly granted a revision from Rs.1400-2300 to Rs.1640-2900 after 1-1-1986, and we having held the revision not being in accordance with law, were certainly not entitled to a further revision pursuant to the recommendations of the Fifth Pay Commission as extended by the Order of the Government dated 27-10-1997 and in terms of the said Order.

17. In view of the above, we find that the petitioners case for fixing their pay scale at Rs.5500-9000 is devoid of any merit. The petitions are, therefore, hereby dismissed but with no order as to costs. Rule discharged.

A. P. LAVANDE, J.

N. A. BRITTO, J.

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